

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA

UNITED STATES OF AMERICA, THE
STATE OF INDIANA, THE CITY OF
HAMMOND,

Plaintiffs,

v.

FERRO CORPORATION,

Defendant.

CIVIL ACTION NO.

CONSENT DECREE

Plaintiff, the United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), filed a complaint under Section 113(b) of the Clean Air Act ("the Act"), 42 U.S.C. § 7413(b), against Ferro Corporation ("Ferro") alleging violations of the Act and the Indiana State Implementation Plan ("SIP") at its Keil Chemical Division, located at 3000 Sheffield Avenue, Hammond, Indiana. Plaintiff, the State of Indiana on behalf of the Indiana Department of Environmental Management ("IDEM"), and the City of Hammond, Indiana ("City of Hammond"), on behalf of the Hammond Department of Environmental Management ("HDEM"), filed complaints under Section 304(a)(3) of the Act, 42 U.S.C. § 7604(a)(3),

against Ferro alleging violations of the Act, the Indiana SIP and local ordinances.

The United States, the State of Indiana, and the City of Hammond have held several meetings with Ferro Corporation regarding the claims of the federal, state and local environmental agencies, including those addressed in Notices of Violation issued to Ferro by U.S.EPA on May 4, 1999, and December 10, 1999, relating to the Pyro-Chem manufacturing process that Ferro formerly operated at its Keil Chemical facility. The Pyro-Chem process initially began operating in the early 1980s and, from July 29, 1994 until June 2000, Ferro operated the process under an Agreed Order, which, among other requirements, imposed a 25-ton per year emission limit for volatile organic compounds. In June 2000, Ferro sold the Pyro-Chem manufacturing process and equipment, and discontinued production of Pyro-Chem at the Keil Chemical facility. Since the sale closed, the buyer of Pyro-Chem has removed from the Keil Chemical facility some, but not all, of the equipment formerly used for Pyro-Chem production.

Ferro Corporation does not admit to liability for the claims alleged in the complaints filed by the United States, the State of Indiana or the City of Hammond. The United States, the State of Indiana, the City of Hammond and Ferro Corporation (collectively "the parties") agree to the entry of this Consent Decree without trial of any issues, and stipulate that entry of this Consent Decree is appropriate to resolve

claims alleged in the filed complaints for violations of air pollution laws, regulations, and ordinances held by the United States, the State of Indiana, and the City of Hammond relating to the Act, the Indiana and local ordinances, and is in the public interest.

NOW, THEREFORE, without any admission of fact or law, and without any admission of the violations alleged in the complaint hereby ORDERED and DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action under Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1331, 1345 and 1355. Venue in this district is proper under 28 U.S.C. § 1391(b) and Section 113(b) of the Act, 42 U.S.C. § 7413(b), because it is the judicial district in which Ferro's Keil Chemical Division is located and in which the alleged violations occurred. The complaint states claims upon which relief may be granted under Section 113 of the Act.

II. PARTIES BOUND

2. This Consent Decree applies to and binds the parties and their successors and assigns.

The undersigned representatives of Ferro, the United States, the State of Indiana, and the City of Hammond each certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind his or her respective party to this document. Ferro shall submit a copy of this consent decree, if it is still in effect, to any future purchaser, owner or successor in interest of its Keil Chemical Division.

III. COMPLIANCE

3. Ferro shall comply with the Act and the Indiana SIP at its Keil Chemical Division.

Ferro shall not operate the Pyro-Chek process in the State of Indiana.

4.

5. Unless Ferro completes the sale of all facilities at the Keil Chemical Division within 60 days after entry of this Decree, Ferro shall complete an Environmental Management System audit of any remaining units at the Keil Chemical Division Facility as specifically described in Appendix A. Should the sale of the Keil Chemical Division facility occur after 60 days of entry of this Consent Decree, but before the requirements of subparagraph (a) through (d) of this paragraph are fulfilled, Ferro and/or its successors in interest must complete the requirements of this paragraph.

- a. Within 60 days after entry of this Decree, Ferro shall provide to EPA, IDEM and HDEM, in writing:

- (i) The name(s), affiliation(s) and address(es) of possible independent auditor(s) who meet the requirements of subparagraphs ii through v, below;
- (ii) Evidence that each auditor(s):
 - A. has completed at least secondary education (or the equivalent); and
 - B. has either a bachelor's degree (or equivalent) and four years of appropriate work experience, or has completed formal post-secondary full-time or part-time education and has three years of appropriate work experience, or has five years of appropriate work experience. Appropriate work experience is that which contributes to the development of skills and understanding in all of the following:
 - (1) environmental science and technology,
 - (2) technical and environmental aspects of facility operations,
 - (3) relevant requirements of environmental laws, regulations and related documents;
 - (4) environmental management systems and standards against which audits may be conducted; and
 - (5) audit procedures, processes and techniques;
 - C. has completed on-the-job training in carrying out environmental audits, including training within the auditor's own organization or by an outside group.

- (iii) Evidence that the team conducting the audit, in composite, has a working process knowledge of the facility or similar operations, and has a working knowledge of federal and state environmental requirements which apply to the facility;
 - (iv) A certification by the independent auditor stating that he/she has no interest in or is in no way affected by or affiliated with any of Ferro's business operations; and
 - (v) The schedule, including milestones, for conducting the audit.
- b. Ferro must obtain approval from EPA of the independent auditor selected to conduct the EMS audit no later than 90 days after entry of this Decree. EPA will make its determination to approve or disapprove the auditor in consultation with IDEM and HDEM. Approval of the independent auditor will not be unreasonably withheld.
- c. The EMS audit shall include a review and evaluation of facility systems, subsystems and tasks for the 12 elements listed and described in Appendix A of this Decree.
- d. The results of the audit, which may be commenced immediately upon the requirements of subparagraph 4(b) of this Decree being met, shall be documented in a final audit report prepared by the auditor(s) and provided to Ferro. The report shall provide the auditor's determination on whether the 12 elements in Appendix A are being adequately addressed by Ferro's current mode of operation, and in instances where they are not, shall provide

suggestions for improving or modifying Ferro's operation in order to satisfy the 12 elements of Appendix A. The final report shall be provided to EPA, IDEM, and HDEM at the time that it is provided to Ferro.

- e. The final audit report shall be provided to EPA, IDEM, HDEM, and Ferro within 180 days after EPA approval of the independent auditor:-

IV. CIVIL PENALTY

- 5. Within 30 days following the Court's entry of this Consent Decree, Ferro shall pay civil penalty amounts as follows: \$1,050,000 to the United States; \$600,000 to the State of Indiana; and \$1,350,000 to the City of Hammond;

- a. Ferro shall make its \$1,050,000 payment to the United States by Fedwire Electronic Funds Transfer (EFT) to the U.S. Department of Justice ("DOJ") Lockbox Bank, in accordance with specific instructions to be provided to Ferro following entry of this Consent Decree, and shall reference DOJ Case No. 90-5-2-1-1910/1, the Civil Action Number assigned to this case by the United States District Court for the Northern District of Indiana, and U.S.A.O. File No. 1999V00526. Any funds received at the Lockbox Bank after 3:00 p.m. Eastern Time shall be credited on the next business day. Within five days of penalty payment, Ferro shall send written notice of payment and a copy of any transmittal documentation to EPA and DOJ at the addresses listed in Section XII of this Consent Decree.
- b. Ferro shall pay \$600,000 to the State of Indiana as follows: Ferro shall mail a cashiers or certified check, payable to the Environmental Management Special

Fund, to Cashier, IDEM, 100 North Senate Avenue, P.O. Box 7060, Indianapolis, IN 46207-7060. The Auditor's Account # 3240-421000-140600 shall appear on the check and on the transmittal letter accompanying the check. Ferro shall send a copy of the transmittal letter to the Indiana Department of Environmental Management at the address in Section XII of this Consent Decree.

- c. Ferro shall pay \$1,350,000 to the City of Hammond by Electronic Fund Transfer to the Bank Calumet, Hammond, Indiana (Routing Number 0719-0088-3) and shall reference account number 739-808-7. Within five days of penalty payment, Ferro shall send written notice of payment and a copy of any transmittal documentation to Ronald L. Novak, Hammond Department of Environmental Management, 5925 Calumet Avenue, Hammond, Indiana 46320.
6. Upon entry of this Consent Decree, the United States, the State of Indiana and the City of Hammond shall be judgment creditors of Ferro for purposes of collecting this penalty and enforcing this Consent Decree.
7. Civil penalties paid pursuant to this Consent Decree shall not be deductible for purposes of federal taxes.
8. Ferro shall pay interest and charges for any late payment to the United States as follows:

- a. Interest on any balance more than 30 days overdue at the statutory judgment interest rate prescribed at 28 U.S.C. § 1961 in effect when the Court enters this Consent Decree;
 - b. A \$15 handling charge each month that payment is more than 30 days overdue; and
 - c. A penalty of six percent per year on any balance more than 90 days overdue.
9. Ferro shall pay interest and charges for any late payment to the State of Indiana or the City of Hammond as follows:
- a. Interest on any balance more than 30 days overdue at the statutory judgment interest rate prescribed at Indiana Code § 24-4.6-1-101 in effect when the Court enters this Consent Decree;
 - b. A \$15 handling charge each month that payment is more than 30 days overdue; and
 - c. A penalty of eight percent per year on any balance more than 90 days overdue.

V. IDEM/HDEM ENVIRONMENTAL PROJECT

10. Within 30 days following entry of this Consent Decree, Ferro shall pay \$844,000 to fund the City of Hammond's brownfields project known as the Industrial Fuel and Asphalt/Meyer's Project ("Project") by depositing \$844,000 by Electronic Funds Transfer with the Bank Calumet, Hammond, Indiana (Routing Number 0719-0088-3) and shall reference account number 810-355-6.
11. Within five days of payment, Ferro shall send written notice of payment and a copy of any transmittal documentation to the EPA, DOJ, IDEM, and HDEM at the addresses listed in Section XII of this Consent Decree.
12. If the Project is completed at a cost of less than \$844,000, the balance remaining in Bank Calumet account number 810-355-6 shall be applied toward remediation of the following former gasoline service stations in the vicinity of the Project area: Former H&H Service Station, 4406 Hohman Avenue, Hammond, Indiana, and Former Adolf Meyer Service Station, 4220-4226 Sheffield Avenue, Hammond, Indiana.
13. Ferro shall not take a tax deduction or otherwise incur favorable tax consequences in relation to its funding of the remediation work discussed above in paragraphs 10 or 12. For the year Ferro incurs the \$844,000 cost for funding the remediation work discussed above in paragraphs 10 and 12, Ferro's chief financial officer (or other

official responsible for tax preparation) must submit a signed statement to EPA, IDEM and HDEM at the addresses listed in Section XII of this Consent Decree certifying that the expenses are not deducted. The certification shall state:

Under penalties of perjury, I declare that I have examined the tax return pertaining to the year in which Ferro Corporation has paid \$844,000 for an environmental project. To the best of my knowledge and belief, these tax returns do not contain deductions or depreciation for any environmental project expenses Ferro Corporation has incurred.

VI. STIPULATED PENALTIES

14. Ferro shall pay stipulated penalties for each violation of paragraphs 3, 4, and 10 of this Consent Decree as follows:

| <u>Period of Violation</u> | <u>Stipulated Penalty</u> |
|--|---------------------------|
| 1 st to 30 th day | \$1000/day per violation |
| 31 st to 60 th day | \$2,500/day per violation |
| After 60 th day | \$6,000/day per violation |

15. Ferro shall pay a stipulated penalty of \$500 per day for each violation of paragraphs 11, 12, and 13 of this Consent Decree.
16. In addition to stipulated penalties, the United States, the State of Indiana, and the City of Hammond may seek any legal or equitable relief for violations of this Consent Decree.
17. Where violations of this Consent Decree are also violations of the Act, the United States, the State of Indiana or the City of Hammond may elect, in their sole discretion, to seek penalties under Section 113(b) or Section 304(a)(3) of the Act, 42 U.S.C. §§

7413(b)(a) or 7604(a)(3). If the United States, the State of Indiana or the City of Hammond seeks penalties for a violation of the Act and is awarded a monetary penalty under the Act, Ferro shall receive a credit against that judgment for the amount of the stipulated penalty it paid pursuant to this Decree for the same act or omission.

18. Ferro shall pay stipulated penalties within 30 days of receipt of a written demand for payment of such stipulated penalties.
19. Ferro shall pay stipulated penalties owed to the United States, the State of Indiana, and the City of Hammond according to the following percentage division: Ferro shall pay 35 percent of any stipulated penalty owed under this Consent Decree to the United States by certified or cashiers check payable to "Treasurer, United States of America," and shall tender the check to the Office of the United States Attorney for the Northern District of Indiana at the address set forth in Section XII of this Consent Decree, listing on its check the civil action number of the United States' filed complaint. Ferro shall pay 20 percent of any stipulated penalty owed under this Consent Decree to the State of Indiana by certified or cashiers check payable to the Environmental Management Special Fund, and shall send the check to Cashier, IDEM, 100 North Senate Avenue, P.O.. Box 7060, Indianapolis, IN 46207-7060. Ferro shall pay 45 percent of any stipulated penalty owed under this Consent Decree to the City of Hammond by certified or cashiers check payable to the City of Hammond, and shall send the check to the Hammond City Controller, Attn. HDEM Penalty Account 248-354.00, 5925 Calumet Avenue, Hammond, IN 46320. Ferro shall send evidence of all stipulated penalties paid to the United States, the State of Indiana, and the City of Hammond at

the addresses listed in Section XII of this Consent Decree. Interest shall accrue on any overdue amounts as provided in paragraph 8 and 9 of this Consent Decree.

20. All stipulated penalties shall begin to accrue on the day a violation occurs and shall continue to accrue until Ferro complies. Stipulated penalties shall simultaneously accrue for separate violations of this Consent Decree.
21. No penalties or interest shall accrue for violations(s) caused by a force majeure event as defined in Section VII, or where Ferro prevails in dispute resolution.
22. Notwithstanding any other provision of this Section, the United States, the State of Indiana or the City of Hammond may, in their unreviewable discretion, waive any portion of a stipulated penalty that has accrued pursuant to this Consent Decree.

VII. FORCE MAJEURE

23. A force majeure event is an event beyond the control of Ferro or any entity controlled by Ferro, including its consultants and contractors, that Ferro could not have reasonably foreseen and prevented. Unanticipated or increased costs, changed financial circumstances, and technical impracticability are not events beyond the control of Ferro.
24. Ferro shall notify the United States, the State of Indiana and the City of Hammond in writing within 15 business days after learning of an event which Ferro knew or should have known would or did cause delayed compliance or a failure to maintain compliance with this Consent Decree. The notice shall state whether Ferro claims that a force majeure event caused or will cause the noncompliance. The notice shall state the anticipated duration of the noncompliance, its cause(s), Ferro's past and proposed

actions to prevent or minimize the noncompliance, and the schedule to carry out those actions. Ferro shall take all reasonable actions to avoid or minimize any delay. If Ferro fails to give notice according to this paragraph, Ferro shall not be excused for a violation of this Consent Decree based on an alleged force majeure event.

25.

26. If EPA agrees, after consultation with the State of Indiana and the City of Hammond, that a force majeure event caused or will cause a violation of a Consent Decree requirement, the deadline to comply with that requirement shall be extended by such time as is necessary to complete those obligations and Ferro shall be excused for the violation caused by the force majeure event.

27. Any extension of time granted by EPA due to a force majeure event shall be given to Ferro in writing.

28. If EPA, after consultation with the State of Indiana and the City of Hammond, does not agree that a force majeure event caused or will cause a violation of a Consent Decree requirement, EPA must notify Ferro in writing of its decision. Ferro may submit the matter to the Court for resolution under Section VIII of the Decree. If the Court determines that a force majeure event caused the violation, Ferro shall be excused for that violation, but only for the time the violation continued based on the force majeure event. Ferro bears the burden of proving that a force majeure event caused a violation of this Consent Decree. Ferro also bears the burden of proving the duration and extent of any delay or violation attributable to a force majeure event.

VIII. DISPUTE RESOLUTION

28. If the parties are unable to agree upon any requirement or other matter described herein, or in the event a dispute should arise among the parties regarding the implementation of the requirements of this Decree, the parties shall attempt to resolve the dispute through negotiation for at least 15 calendar days. The parties may extend the negotiating period by written agreement. If the parties do not resolve the dispute, the United States' position shall bind Ferro unless, within 30 days from the close of negotiations, a party files a motion asking the Court to resolve the dispute. Any application to the Court shall set forth the nature of the dispute and a proposal for resolution. The other party (ie shall have 30 days to file a response. The legal standard applicable to any such dispute shall be the standard provided by applicable law.
29. The invocation of formal dispute resolution procedures under this Section shall not of itself extend or postpone any obligation of Ferro under this Consent Decree, but the payment of stipulated penalties with respect to the disputed matter shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall continue to accrue from the first day of noncompliance with any provision of this Consent Decree and shall be paid within 15 calendar days after the Court issues an order resolving the dispute in the United States' favor or after the resolution in the United States' favor of any appeal concerning the dispute. To the extent that Ferro prevails on the disputed issue, stipulated penalties shall be excused.

IX. RIGHT OF ENTRY

30. Until termination of this Consent Decree, EPA, the State of Indiana, and the City of Hammond, their contractors, consultants and attorneys, may enter Ferro's Keil Chemical Division at all reasonable times upon proper presentation of credentials to the highest ranking employee present at the facility, for the purposes of:
- a. Monitoring the progress of activities required by this Consent Decree;
 - b. Verifying any information submitted to EPA under this Consent Decree;
 - c. Obtaining samples, and, upon request, splits of any samples taken by Ferro or its consultants; and
 - d. Assessing Ferro's compliance with this Consent Decree.
31. Notwithstanding any provision of this Consent Decree, the United States, the State of Indiana, and the City of Hammond retain all access authorities and rights, including enforcement authorities under the Act and any other applicable federal, state or local regulations.

X. EFFECT OF DECREE

32. Ferro's full satisfaction of the terms of this Consent Decree, including payment of all penalties due under this Consent Decree, settles all civil claims of the United States, the State of Indiana, and the City of Hammond alleged in their complaints through the lodging date of the Consent Decree.

33. This Consent Decree does not diminish or affect Ferro's responsibility to comply with any federal, state, or local law or regulation.
34. Nothing in this Consent Decree shall prevent or limit the United States' rights to obtain penalties or injunctive relief under the Act or other federal statutes or regulations, except as expressly stated in this Consent Decree. Nothing in this Consent Decree shall prevent or limit the State of Indiana's or the City of Hammond's rights to obtain penalties or injunctive relief under state statutes or local city ordinances, except as expressly stated in this Consent Decree.
35. This Consent Decree does not limit or affect the rights of the parties to the Consent Decree against any third parties, nor does it limit the rights of third parties.

XI. COSTS OF SUIT

36. Each party shall bear its own costs and attorneys' fees in this action.

XII. NOTICE

37. Except as stated otherwise, the parties shall address any information, report, or notice required by this Consent Decree as specified below. All notices and submissions shall be deemed submitted on the date that they are postmarked.

As to the United States:

United States Attorney for
the Northern District of Indiana
301 Federal Building
204 South Main Street

South Bend, Indiana 46601

Chief, Environmental Enforcement Section

United States Department of Justice

Environment and Natural Resources Division

DOJ # 90-5-2-1-1910/1

P.O. Box 7611

Washington, D.C. 20044-7611

Linda Hamsing

U.S. Environmental Protection Agency - Region 5

Enforcement and Compliance Assurance Branch

Mail Code AE-17J

77 West Jackson Boulevard

Chicago, IL 60604

As to the State of Indiana:

Craig Henry

Office of Enforcement

Indiana Department of Environmental Management

100 North Senate Avenue
P.O. Box 6015
Indianapolis, IN 46206-6015

As to the City of Hammond, Indiana:

Ronald Novak
Hammond Department of Environmental Management
5925 Calumet Avenue
Room 304
Hammond, Indiana 46320

Denise Sejna
Hammond City Attorney
5925 Calumet Avenue
Hammond, Indiana 46320

As to Ferro:

James C. Bays
Vice President and General Counsel
Ferro Corporation

1000 Lakeside Avenue
Cleveland, Ohio 44114

Van Carson
Squire, Sanders & Dempsey L.L.P.
4900 Key Tower
127 Public Square
Cleveland, OH 44114

XIII. INTEGRATION AND MODIFICATION

39. Except as specifically provided for herein, there shall be no modification or amendments of this Consent Decree without written agreement of the parties to this Consent Decree and approval by this Court.
40. Nothing in this Consent Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

XIV. PUBLIC COMMENT

41. The United States shall lodge this Consent Decree with the Court for at least 30 days for public notice and comment according to 28 C.F.R. § 50.7. The United States may withdraw or modify its consent to this Consent Decree based on public comments.

Ferro, the State of Indiana, and the City of Hammond all consent to the entry of this Consent Decree without further notice.

XV. CONTINUING JURISDICTION OF THE COURT

42. The Court shall retain jurisdiction after entry of this Consent Decree to modify or enforce its terms, and to resolve any disputes arising under the Consent Decree.

XVI. CERTIFICATION

43. In each notice and report that Ferro submits under this Consent Decree, Ferro shall certify that the document is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals directly responsible for gathering the information, the information is true and complete to the best of my knowledge.

I know that there are significant penalties for submitting false information, including fines and imprisonment for knowing violations. See 18 U.S.C. § 1001.

XVII. TERMINATION

44. Any party may move for termination of this Consent Decree after 30 days of all of the following occurring:
- a. Ferro has complied with all the terms of this Consent Decree;

- b. Ferro has paid the entire civil penalty, and any stipulated penalties, interest and charges due under Sections IV and VI of this Consent Decree;
 - c. Ferro has certified compliance with paragraph 44 a. and b., above, to the Court, the United States, the State of Indiana, and the City of Hammond, pursuant to Section XII of this Consent Decree; and
 - d. EPA, the State of Indiana, or the City of Hammond, within 60 days of receiving the certification under subparagraph 44 c., above, has not contested that certification.
45. If the United States, the State of Indiana, or the City of Hammond dispute Ferro's certification, the Consent Decree shall remain in effect pending resolution of the dispute by the parties or the Court.

XVIII. SIGNATURE

46. Each undersigned representative of the United States, the State of Indiana, or the City of Hammond and Ferro Corporation certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such party to this document.

Entered this ____ day of _____, 2002.

UNITED STATES DISTRICT COURT JUDGE

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of the United States, the State of Indiana, and the City of Hammond, Indiana v. Ferro Corporation,

FOR PLAINTIFF UNITED STATES OF AMERICA:

THOMAS L. SANSONETTI
Assistant Attorney General
Environment and Natural Resources
Division
United States Department of Justice

Date:_____

ESPERANZA ANDERSON
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources
Division
United States Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 514-4059

Date:_____

JOSEPH S. VAN BOKKELEN
United States Attorney

JOSEPH REID
Assistant United States Attorney
Northern District of Indiana
Assistant United States Attorney
Northern District of Indiana
1001 Main Street, Suite A
Dyer, Indiana 46311

Date:_____

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of the United States, the State of Indiana, and the City of Hammond, Indiana v. Ferro Corporation,

SYLVIA K. LOWRANCE
Acting Assistant Administrator
Office of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency

Date:_____

THOMAS V. SKINNER
Regional Administrator
Region 5
U.S. Environmental Protection Agency

Date:_____

SUSAN M. TENNENBAUM
Associate Regional Counsel
U.S. Environmental Protection Agency
Region 5
77 West Jackson Boulevard (C-14J)
Chicago, Illinois 60604-3590

Date:_____

FOR THE STATE OF INDIANA:

LORI F. KAPLAN
Commissioner
Indiana Department of Environmental Management

Date:_____

CHARLES J. TODD
Chief Operating Officer
Indiana Attorney General's Office

Date:_____

FOR THE CITY OF HAMMOND, INDIANA

RONALD L. NOVAK

Director

Hammond Department of Environmental Management

5925 Calumet Avenue

Hammond, Indiana 46320

Date:_____

Approved as to legality and form by:

DENISE SEJNA

City Attorney

Law Department

Hammond, Indiana 46320

Date:_____

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of the United States, the State of Indiana, and the City of Hammond, Indiana v. Ferro Corporation,

FOR THE DEFENDANT,
FERRO CORPORATION:

James C. Bays
Vice President and General Counsel
Ferro Corporation
1000 Lakeside Avenue
Cleveland, Ohio 44114
(216) 641-8585

Date:_____

Appendix A
SUPPLEMENTAL ENVIRONMENTAL MANAGEMENT SYSTEM REQUIREMENTS

I. Definitions *[includes only those definitions that are specifically relevant to the EMS Improvement provisions and this Consent Decree]*

a) “Audit Report” shall mean a report setting forth the audit findings resulting from the audit of the Facility by the independent auditor, which meets all of the requirements set forth in paragraph 4 of this Decree.

b) “Auditor” shall mean the independent third-party hired by Ferro and approved by EPA, IDEM and HDEM to conduct an EMS audit at the Facility, and who meets the requirements set forth in paragraph 4 of the Consent Decree.

c) “Contractor” shall mean firms or individuals providing the following services at the facility under contract: asbestos removal; demolition; painting; waste handling and disposal, including truck operators; construction; leak detection and repair; and stack and emissions testing.

d) “Environmental Requirements” shall mean all applicable federal, state, and local environmental statutes, regulations, and ordinances including permits and enforceable agreements between Ferro and the respective environmental regulatory agency(ies).

e) “Facility” as used in the term “the Facility” or in the term “Ferro” shall mean the Ferro Corporation, Keil Chemical Division facility located at 3000 Sheffield Avenue, Hammond, Indiana.

A. Environmental Management System

The Environmental Management System audit shall include a review and evaluation of management systems, subsystems, and tasks for the following elements:

(1) Environmental Policy

(a) This policy, upon which the EMS is based, must clearly communicate management commitment to achieving compliance with applicable federal, state, and local environmental statutes, regulations, enforceable agreements, and permits (hereafter, “environmental requirements”) and continuous improvement in environmental performance. The policy should also state management’s intent to provide adequate personnel and other resources for the EMS.

(2) Organization, Personnel, and Oversight of EMS

(a) Describes, organizationally, how the EMS is implemented and maintained.

(b) Includes organization charts that identify units, line management, and other individuals having environmental performance and regulatory compliance responsibilities.

(c) Identifies and defines duties, roles, responsibilities, and authorities of key environmental program personnel in implementing and sustaining the EMS (e.g., could include position descriptions and performance standards for all environmental department personnel, and excerpts from others having specific environmental program and regulatory compliance responsibilities).

(d) Includes ongoing means of communicating environmental issues and information to all organization personnel, on-site service providers, and contractors, and for receiving and addressing their concerns.

(3) Accountability and Responsibility

(a) Specifies accountability and responsibilities of organization's management, on-site service providers, and contractors for environmental protection practices, assuring compliance, required reporting to regulatory agencies, and corrective actions implemented in their area(s) of responsibility.

(b) Describes incentive programs for managers and employees to perform in accordance with compliance policies, standards and procedures.

(c) Describes potential consequences for departure from specified operating procedures, including liability for civil/administrative penalties imposed as a result of noncompliance.

(4) Environmental Requirements

(a) Describes process for identifying, interpreting, and effectively communicating environmental requirements to affected organization personnel, on-site service providers, and contractors, and ensuring that facility activities conform to those requirements. Specifies procedures for prospectively identifying and obtaining information about changes and proposed changes in environmental requirements, and incorporating those changes into the EMS.

(b) Establishes and describes processes to ensure communication with regulatory agencies regarding environmental requirements and regulatory compliance.

(5) Assessment, Prevention, and Control

(a) Identifies an ongoing process for assessing operations, for the purposes of preventing and controlling releases, ensuring environmental protection, and maintaining compliance with statutory and regulatory requirements. This section shall describe monitoring and measurements, as appropriate, to ensure sustained compliance. It shall also include identifying operations and waste streams where equipment malfunctions and deterioration, operator errors, and discharges or emissions may be causing,

or may lead to: (1) releases of hazardous waste or other pollutants to the environment; (2) a threat to human health or the environment; or (3) violations of environmental requirements.

(b) Describes process for identifying operations and activities where documented standard operating practices (“SOPs”) are needed to prevent potential violations or pollutant releases, and defines a uniform process for developing, approving and implementing the SOPs.

(c) Describes a system for conducting and documenting routine, objective, self-inspections by department supervisors and trained staff, especially at locations identified by the process described in (a) above.

(d) Describes process for ensuring input of environmental requirements (or concerns) in planning, design, and operation of ongoing, new, and/or changing buildings, processes, maintenance activities, products, and management.

(6) Environmental Incident and Noncompliance Investigations

(a) Describes standard procedures and requirements for internal and external reporting of potential violations and release incidents.

(b) Establishes procedures for investigation, and prompt and appropriate correction of potential violations. The investigation process includes root-cause analysis of identified problems to aid in developing the corrective actions.

(c) Describes a system for development, tracking, and effectiveness verification of corrective and preventative actions.

(d) Each of these procedures shall specify self-testing of such procedures, where practicable.

(7) Environmental Training, Awareness, and Competence

(a) Identifies specific education and training required for organization personnel, as well as process for documenting training provided.

(b) Describes program to ensure that organization employees are aware of its environmental policies and procedures, environmental requirements, and their roles and responsibilities within the environmental management system.

(c) Describes program for ensuring that personnel responsible for meeting and maintaining compliance with environmental requirements are competent on the basis of appropriate education, training, and/or experience.

(8) Environmental Planning and Organizational Decision-Making

(a) Describes how environmental planning will be integrated into organizational decision-making, including plans and decisions on capital improvements, product and process design, training programs, and maintenance activities.

(b) Requires establishing written targets, objectives, and action plans by at least each operating organizational subunit with environmental responsibilities, as appropriate, including those for contractor operations conducted at the facility, and how specified actions will be tracked and progress reported. Targets and objectives must include achieving and maintaining compliance with all environmental requirements.

(9) Maintenance of Records and Documentation

(a) Identifies the types of records developed in support of the EMS (including audits and reviews), who maintains them and where, and protocols for responding to inquiries and requests for release of information.

(b) Specifies the data management systems for any internal waste tracking, environmental data, and hazardous waste determinations.

(10) Pollution Prevention Program

(a) Describes an internal program for preventing, reducing, recycling, reusing, and minimizing waste and emissions, including procedures to encourage material substitutions. Also includes mechanisms for identifying candidate materials to be addressed by program and tracking progress.

(11) Continuing Program Evaluation and Improvement

(a) Describes program for periodic (at least annually) evaluation of the EMS, including incorporating the results of the assessment into program improvements, revisions to the manual, and communicating findings and action plans to affected employees, on-site service providers, and contractors.

(b) Describes a program for ongoing evaluation of facility compliance with environmental requirements, and should specify periodic compliance audits by an independent auditor(s). Audit results are reported to upper management and potential violations are addressed through the process described in element 6 above.

(12) Public Involvement/Community Outreach

(a) Describes a program for ongoing community education and involvement in the environmental aspects of the organization's operations and general environmental awareness.